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File No. O. Railways/
Legal Department 47

A. BRANCH

Subject:—

Opinions under the Indian
Railways Act, 1890

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C O N T E N T S.
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Indian Railways Act, 1890.

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Office of the R.L.A.

The Additional Director of Civil Supplies (C & F) discussed with the Manager and Deputy Manager, Bombay Port Trust Railway, the ways and means by which unclaimed wagons of charcoal could be quickly disposed of. The arrangement arrived at is that the Bombay Port Trust Railway should keep the unclaimed wagons of charcoal for 24 hours, and if during that time the owner did not turn up, the wagons should be handed over to the Government for disposal on condition that the Government of Bombay was prepared to give a general indemnity bond to the Bombay Port Trust Railway in respect of the wagons to be delivered over to Government. The Government may then dispose of the goods in any manner they deem fit, and should the owner subsequently turn up and make demand for the wagons from the Bombay Port Trust Railway, the Railway would direct him to Government. If the Charcoal is disposed of, the owner will receive the price thereof, and if it is not disposed of, the same would be handed over to the party concerned.

The question for R.L.A.'s consideration is whether the arrangement arrived at between the Bombay Government and the Bombay Port Trust Railway is legally feasible.

Sub-section (1) of section 47 of the Indian Railways Act, 1890, provides that every railway company and in the case of a railway administered by Government an officer to be appointed by the general controlling authority in this behalf, shall make general rules consistent with this Act for the purposes specified in clauses (a) to (g) thereof. Clause (f) provides for rules regulating the terms and conditions on which the railway administration will warehouse and retain goods at any station on behalf of the consignee or owner. Foot-note 1 at page 403 of Vol. III of the Unrepealed Central Acts, makes it clear that rules made under clause (f) are applicable to all railways in

British,...

British India (vide pp.149-153 of Vol.III of the General Statutory Rules and Orders).

Under sub-section (1) of section 54 subject to the control of the Federal Railway Authority, a railway administration may impose conditions not inconsistent with this Act or with any general rule thereunder, with respect to the receiving, forwarding or delivering of any animals or goods. Sub-section (1) of section 56 provides that when any animals or goods have come within possession of a railway administration for carriage or otherwise and are not claimed by the owner or other person appearing to the railway administration to be entitled thereto, the railway administration shall, if such owner or person is known, cause a notice to be served upon him, requiring him to remove the animals or goods. If such owner or person is not known, or the notice cannot be served upon him, or he does not comply with the requisition in the notice, the railway administration may within a reasonable time, subject to the provisions of any other enactment for the time being in force, sell the animals or goods as nearly as may be under the provisions of section 55, rendering the surplus, if any, of the proceeds of the sales to any person entitled thereto (vide sub-section (2) of section 56). As regards the mode of serving notices, attention is invited to sections 141 and 142.

Rule 13 of the Rules framed under clause (f) of sub-section (1) of section 47, provides that subject to the exception mentioned in rule 18, unclaimed goods shall be kept on hand at the station to which invoiced for a period of not less than one month during which time the notice prescribed in section 56(1) will, if possible, be served upon the person appearing entitled thereto. Rule 14 provides that if the unclaimed goods are not taken delivery of within a period of not less than one month after receipt at the station to which invoiced, they may be sent to the unclaimed goods or lost property office and

death.....

dealt with as laid down in rule 21. Under rule 21 public sales by auction shall be held from time to time of all unclaimed or lost property which has remained in possession of railway administration over six months. It requires that at least fifteen days previous notice of each auction shall be given by advertisement in a newspaper. Under rule 22, any surplus proceeds arising out of sales of lost or unclaimed consignments will, after payment of all charges and expenses due to the railway administration, be paid to the person or persons entitled thereto. It appears that the B.P.T. Railway has adopted rules on the lines of rule 13, 14 and 21 (vide para. 34 at p. 23 of Goods Traffic Rules and Rates.).

The cumulative effect of the provisions of section 56 read with rules 13, 14, 21 and 22 of the rules framed under section 47(1)(f) is this:-

(1) if the goods are not claimed by the owner or other persons appearing to the railway administration to be entitled thereto, and if such person is known to the railway administration, it shall cause a notice to be served upon him requiring to remove goods, and the goods shall be kept on hand at the station for a period of not less than one month (sec. 56(1) read with rule 13),

(2) if such owner or person is not known, or notice cannot be served upon him, or if he does not comply with the requisition in the notice, and the delivery of the goods is not taken within a period of one month after receipt thereof at the station, the railway administration is empowered to sell the goods, rendering the surplus, if any, of the sale proceeds to the persons entitled thereto (sec. 56(2) read with rule 14),

(3) if the unclaimed goods have remained in possession of the railway administration for over six months, they will be sold by public auction, and surplus, if any, after making good the charges

and.....

and expenses due to the railway administration, will be paid to the person entitled thereto.

Section 56(2) confers upon the railway administration power to sell the unclaimed goods after complying with the provisions of section 56(1) and rules 13 and 14 of the rules made under section 47(1)(f) and to deliver the surplus, if any, to the person entitled thereto (vide section 57 and rule 22). In the absence of any provision in the Act the statutory power to sell unclaimed goods cannot be transferred or delegated to the Bombay Government. Consequently apart from the general indemnity bond proposed to be taken from the Bombay Government the Bombay Port Trust Railway will not be immune from the liability for sale of unclaimed goods made by Bombay Government after twenty-four hours from the arrival thereof, in contravention of the statutory provisions of section 56 of the Indian Railways Act, 1890 and rule 13, 14 and 21 of the rules made under section 47(1)(f). Consequently, the arrangement arrived at between the Bombay Government and the Bombay Port Trust Railway is open to legal objection.

Sd/- D.V.VYAS.

Rememberer of Legal Affairs.

U.O.R. to C.S.D.No. 1651

Dated the 18th February 1947.

OFFICE OF THE R.L.A.

It is considered necessary to construct two level crossings on the G.I.P. Railway lines, one near Madha railway station and the other near Ponalvadi railway station. The District Local Board, Shelapgr, at whose instance the level crossings are to be constructed is willing to bear the cost of construction but not of maintenance. The railway authorities maintain that the cost of maintenance should be borne by the authority at whose instance the level crossings are to be made. The question referred to R.L.A. is whether it is possible to require the railway administration to bear the cost of maintenance of the two level crossings.

Section 11(1) of the Indian Railways Act, 1890, requires the railway administration to make and maintain certain works for the accommodation of the owners and occupiers of lands adjoining the railway. Under section 12 if the Provincial Government or a local authority desires to construct a public road or other work across, under or over a railway; he or it, as the case may be, at any time require the railway administration to make at his or its expenses such further accommodation works as he or it thinks necessary and are agreed to by the railway administration or as, in case of difference of opinion, may be authorised by the general controlling authority. It is apparent that section 12 does not make any provision for the maintenance of the work constructed at the instance of a local authority. Obviously the authority at whose instance the work is constructed will have to bear the cost of maintenance of that work. Consequently it would not be legally feasible to require the railway administration to bear the cost of maintenance of the two level crossings.

In *Governor General in Council v. Municipal Council, Madura* (1946 Madras, 333) it was held that under section 11(3(b) of the Indian Railways Act, 1890, very wide powers have been conferred on the Government and in requiring.

additional works to be done the powers of the Government are not restricted to what was really required when the railway was constructed. Following that decision it would be possible for Government to require the railway administration under section 11(3)(b) to construct the two level crossings at its own cost. But it is doubtful whether the railway administration would be liable to maintain these level crossings after construction. Since however the District Local Board, "Belapur, is willing to bear the cost of construction, there is no point in requiring the railway administration to construct the level crossings under section 11(3)(b) .

Under section 13 of the Indian Railways Act, 1890, the safety controlling authority may ^{or} require that within a time to be specified in the requisition, or within such further time as it may appoint in this behalf, suitable gates, chains, bars, stiles or hand-rails be erected or renewed by a railway administration at places where a railway crosses a public road on the level and persons be employed by a railway administration to open and shut such gates, chains or bars. The Collector in his letter at page 27 observes: "The total expenditure for two gatemen per annum as stated in the President's letter No. 56 dated 12th February 1946 if the level crossings are maintained by the District Local Board comes to Rs.500 per annum in addition to Dearness allowance about Rs.400 per annum." It appears therefore that for purposes of maintaining the level crossing what is required is to appoint two gatemen. If so, the P.W.D. may move the safety controlling authority to require the railway administration under section 13 to provide suitable gates at the two level crossings and to appoint two gatemen to open and shut such gates.

Id/-P.M.L.

11/9

Remembrancer of Legal Affairs.

U.R. to P.W.D. No.9174n, dated 13th September 1947.

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OFFICE OF THE R.L.A.

Rule 5 of the Rules made under clause (f) of section 47(1) of the Indian Railways Act, 1890 provides:-

"Subject to the provisions of section 56 of the Indian Railways Act, 1890 notice of arrival will be sent when practicable, but the Railway Administration will accept no responsibility for non-receipt thereof".

The question of Non-receipt can only arise only if a notice is sent. It cannot be contended by the Railway Administration that it was not practicable for the station Master, Belgaum to send notice of arrival of goods to the Executive Engineer or the Deputy Engineer, Belgaum. It is not clear from the letter of the Superintending Engineer, Southern Circle, Belgaum at p. 7 ante whether the Railway Administration did not send any notice of arrival of goods. The fact that the first intimation of the coal having arrived on the Belgaum station was received by the Executive Engineer and the Deputy Engineer, Belgaum Irrigation Sub-Division, on 2nd October 1946 on which date only the Railway Receipt was received, seems to exclude the possibility of a notice being sent by the Railway Administration. Consequently further inquiries should be made with the Station Master, Belgaum and if, on such inquiry, it is found that no notice was sent by the Station Master, Belgaum it would be legally possible for Government to claim refund of the demurrage and wharfage levied for the period from 4.9.1946 to 3.10.1946.

If on inquiry, as stated above it is found that the refund of the demurrage and wharfage for the period from 4.9.1946 to 3.10.1946 can be claimed, it would be possible to contend that the Executive Engineer never declined to take delivery but postponed it on the intimation that the

question.....

question was under reference and consequently the levy of further charge for the subsequent period upto 15.2.1947 was illegal. The Executive Engineer should in the first instance be directed to ascertain from the Station Master, Belgum whether any notice of arrival of goods was sent to him as provided in rule 5; and if it be found that no such notice was issued, the P.W.D. should take up the matter with the Railway Administration and claim refund of the charges on the grounds stated above.

Id/- P.M.L. 12/9

Remembrancer of Legal Affairs.

U.R. to P.W.D., No. 9199, dated the 15th

September 1947.

Office of the R.L.A.

Sale proceeds of
unclaimed lower bags.

Indian Railways Act,
1890.

Under section 56(2) of the Indian Railways Act, 1890, the Railway administration is entitled to hold the net sale proceeds of unclaimed goods for the benefit of the persons entitled thereto and a suit by such person can lie within three years from the date of receipt of sale proceeds for his use (see Tarachand v. M.S.M.RLY. Co., Ltd. 44 Mad 823). Consequently the net sale proceeds (after deducting the expenses of sale) held by Government in the present case should be paid to the Railway administration and if within three years from the date of payment no claim is made against the Railway administration the question of claiming the amount under section 174 of the Government of India Act, 1935, may be considered, although it is doubtful whether the claim can be substantiated.

H/- P.H.L. 7/10

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. 9829, dated the 8th

October 1947.